

## **City of Alexandria Resource Protection Area Exception Request Process**

Article XIII of the Alexandria Zoning Ordinance – the Environmental Management Ordinance (EMO) – regulates land-disturbing activities in the City through the incorporation of the Chesapeake Bay Act (Bay Act) and the Virginia Stormwater Management Program (VSMP) as applicable. Portions of the EMO provided below pertain to the protection of natural features and the allowable exception process in the ordinance.

### **Definition of a Resource Protection Area (RPA)**

Resource protection areas (RPAs) consist of sensitive land that has either an intrinsic water quality value due to the ecological and biological processes such land performs or that is sensitive to uses or activities such that the use results in significant degradation to the quality of state waters. In their natural condition, these lands provide for the removal, reduction, or assimilation of nonpoint source pollution entering the Bay and its tributaries, such as the Potomac River and the City's local waterways.

Per section 13-107, the following are within the RPA:

- (1) Tidal wetlands;
- (2) Tidal shores;
- (3) Nontidal wetlands connected by surface flow and contiguous to tidal wetlands
- (4) Water bodies with perennial flow;
- (5) A buffer area of 100 feet (measured from top of bank) located adjacent to and landward of the components listed in subsections (1) through (3) above and along both sides of any water body with perennial flow.

### **Allowable Redevelopment within the RPA**

Per section 13-107(C)(2) of the, redevelopment may be allowed provided that the following criteria are met:

- (a) There is no increase in impervious surface cover;
- (b) There is no further encroachment within the RPA; and
- (c) The proposed redevelopment is consistent with the city master plan.

### **Exception Request Submittal**

Per section 13-119(A), a request for an exception to the requirements of this article can be made in writing to the director of T&ES. The request must identify the impacts of the proposed exception on water quality and on lands within the RPA through the performance of a water quality impact assessment (WQIA). Note that per section 13-119 (C), economic hardship alone is not sufficient reason to grant an exception.

In order to grant an exception, the reviewing body must find that the applicant has demonstrated by a preponderance of the evidence that:

- (1) Granting the exception will not confer upon the applicant any special privileges that are denied to other property owners in the CBPA overlay district;
- (2) The exception is not based upon conditions or circumstances that are self-created or self-imposed, nor does the exception arise from conditions or circumstances either permitted or noncomplying that are related to adjacent parcels;

- (3) The exception is the minimum necessary to afford relief;
- (4) The exception will be consistent with the purpose and intent of the overlay district, and not injurious to water quality, the neighborhood or otherwise detrimental to the public welfare;
- (5) Reasonable and appropriate conditions are imposed, as warranted, to prevent the allowed activity from causing degradation of water quality.

*Note: In reviewing the exception request, the reviewing body must only consider the five conditions above. Other factors such as mitigation in neighboring areas, affordable housing contributions, roadway improvements, etc. may not be considered in the approval process.*

### **Exception Request Review Process**

- (1) The applicant must submit a request for exception and a complete Water Quality Impact Assessment (WQIA) consistent with the requirements of section 13-117 as part of a complete application, to be determined by T&ES staff.
- (2) Once deemed complete, staff will review and provide comments, until which time comments are satisfied, then staff will render a recommendation and create a 'staff report' for consideration during further review by other bodies.
- (3) The exception request and the staff recommendation must be presented to the Environmental Policy Commission (EPC). The EPC will make a recommendation of support, denial, or modification which will then be considered as part of the Planning Commission's deliberations, per section 13-119 (G).

The exception request must be presented to the Planning Commission for final determination, which will include the staff report. This request must be heard separately from the development case. Only one development layout may be brought before the Planning Commission during each session.

### **Timeline Specific to the Proposed Newport Village Exception Request**

- The City received an incomplete 'RPA Waiver' dated September 5, 2019 resulting in several discussions with the applicant
- Staff will discuss the Exception Process at November 18, 2019 EPC meeting
- The City must receive a formal Request for an Exception and WQIA that is deemed complete no later than November 15, 2019 for T&ES Staff Recommendation to be eligible for earliest consideration at December 18, 2019 EPC meeting
- If a recommendation for approval or denial is reached at the December 18 EPC meeting, planning Commission will hear the request and EPC recommendation at the regular February 2020 Planning Commission meeting.